

**Electric Records Retention and Destruction Advisory Committee**  
**Meeting Minutes**  
**Tuesday, April 30, 2013**  
**10:00 a.m. – 3:00 p.m.**  
**State Courts Building, 1501 W. Washington, Phoenix, AZ 85007**

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**Present:** Judge Janet Barton, David Bodney, Raushanah Daniels, Christopher Hale, Judge Eric Jeffery, Mark Jensen, Janet Johnson, Judge Dorothy Little, William Mangold, Sandra Markham, Diane McGinnis, Judge John Nelson, Jeff Raynor, Marcus Reinkensmeyer, Melanie Sturgeon, Judge Samuel Thumma, Marty Vance.

**Present Telephonically:** Jon Smith.

**Administrative Office the Courts (AOC) Staff:** Stewart Bruner, Melinda Hardman, Karl Heckart, Kym Lopez.

**Guests:** Mike Baumstark (AOC), Eric Ciminski (AOC), Cheri Heppler (Payson Justice Court), Therese Martin (Arizona Attorney General's Office).

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Call to Order/Welcome and Introductions

With a quorum present, the April 30, 2013 meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair. Mr. Reinkensmeyer welcomed members and introductions were made around the room.

Committee Rules of Procedure and Proxy Form

Mr. Reinkensmeyer presented the Committee Rules of Procedure and Proxy Form for approval.

**Motion:** Judge Nelson moved to approve the Committee Rules of Procedure and Proxy Form as presented. **Second:** Ms. Diane McGinnis. **Vote:** Motion passed unanimously.

Review of Committee Charge and Scope of Work

Mr. Reinkensmeyer reviewed the committee charge as set out in Administrative Order 2013-33. The committee is to consider retention and destruction of electronic *case* records, not *administrative* records. Electronic case records consist of images of case documents as well as data. Data is generally associated with a case management system. The committee shall report its recommendation to the Arizona Judicial Council not later than the Council's December 2013 meeting.

Mr. Reinkensmeyer also advised the committee that he and others at the AOC contacted Tom Clarke of the National Center for State Courts to obtain Mr. Clarke's expertise and advice on national trends and research in the area of retention and destruction of electronic records. Mr. Clarke noted that Arizona is actually on the forefront of these issues, that this is new ground, and presently there is no work like this being carried out in other states. So, Arizona will be cutting a new path with the recommendations this committee will make.

### Review of the History of Policy Development in Arizona on Retention of and Access to Case Records

Melinda Hardman, CSD policy analyst, provided a brief overview of the historic policy development of Rule 123, Rules of the Supreme Court of Arizona; Access to the Judicial Records of the State of Arizona and of the four existing, statewide court records retention schedules. Ms. Hardman also asked members to consider that the focus of their task is electronic records, not paper records. Additionally, she noted many different terms are used indiscriminately to describe electronic case records, including “electronic record,” “original record,” “case record,” and “court record.” Finally, she asked members to consider the distinction between documents and data.

Mr. Reinkensmeyer asked whether any other changes to Rule 123 are anticipated. Ms. Hardman responded that there is a pending rule petition on Rule 123; however, the changes proposed in that petition do not impact this committee’s charge.

A member asked when a high profile case can be removed from the Internet. Ms. Hardman noted that Rule 123 requires a judge to designate a case as high profile; however, the rule does not establish when the case is to be removed from the Internet.

### A Trend in Courts: Moving from Analog to Digital Records

Mr. Reinkensmeyer introduced Karl Heckart, ITD director, and explained that the topics Mr. Heckart will address in his presentation, as well as the recommendations this committee is being asked to make, will impact many projects at the AOC, including E-access, which is currently under construction, and E-bench, which is presently in the procurement stage. The E-Access project will offer remote electronic access to case documents, and the E-bench project will provide judges access to many different technology systems, including the court financial system and the case management system. It will also provide a variety of search features for judges.

Mr. Heckart then presented information about the path courts across the country and in Arizona are pursuing regarding moving from analog to digital case records. Mr. Heckart identified a variety of factors members should consider in establishing a policy on how long electronic case records should be retained including the need to: replicate or back-up electronic records, recover electronic records after a system crash, maintain electronic records in a secure environment, provide access to electronic records beyond the hours a court facility is open, maintain sufficient capacity to store electronic records, and pay the cost of providing all of these services. Mr. Heckart also elaborated on the key questions he felt must be answered to arrive at any policy recommended by the committee.

A member asked what happens to case data that is posted on the supreme court’s public access website when an individual court deletes electronic records. Mr. Heckart responded that if a court deletes a block of information, other than through the case management system, the AOC is unaware of the deletion. If a court deletes case information through the case management system, the deletion is picked up by the AOC through the nightly download of data from all courts.

A member expressed the desire that the destruction of electronic records should be automated, particularly for limited jurisdiction courts.

#### Review of Committee Notebook Material and Examples of Electronic Document and Data Issues

Ms. Hardman introduced the four records retention schedules in the member handbook. She also reviewed the results of her research on the records policies of certain states that are currently working with electronic case records.

Ms. Hardman then discussed the decision tree in the member handbook. She explained that she developed the decision tree by setting out the four issues identified in the committee's authorizing administrative order and then identifying the sub-issues that need to be addressed under each of the four issues. She indicated that the decision tree will be a starting point to help the committee reach its recommendations, however the committee should feel free to offer modifications to the decision tree as it carries out its work. Mr. Reinkensmeyer added that the decision tree will be the foundation of the committee's next meeting, so each member might want to take a look at it before the meeting.

Ms. Hardman and Stewart Bruner, ITD manager of strategic planning next presented a document that identified practical examples of electronic document and data issues facing Arizona courts. Several committee members added their own examples as well. Members discussed the examples and provided the following input:

- Definitions of the terms "record," "original," "case," "record," and "electronic record" vary in Arizona code, rule, and statute.
- Rule 123 is clear that orders of protection cannot be placed online, yet litigants want these orders online for ease of access.
- Perhaps once the records retention period under the schedule has been met, only specific, limited electronic data should be retained on a case for research purposes.
- The AOC could capture and retain data while individual courts delete the cases and data.
- The records retention schedule for limited jurisdiction courts requires these courts to retain civil traffic cases for one year; however, insurance companies research civil traffic violations back three years.
- When identity fraud is committed and certain case records are destroyed with no buffer, possible evidence is being destroyed.
- Is it unfair if some courts retain case records longer than other courts? Are people being treated differently around the state based on whether a court retains or destroys case records?
- Does the supreme court have the power and authority to state in the retention schedules that, after a certain number of years case records *must* be destroyed instead of case records *might* be destroyed – not be permissive? Another member responded, *yes* – courts exist to enact rules as they're written and as the courts understand them so that if a change is made to the retention schedule, which states that case records *must* be destroyed, then the records will be destroyed.
- Consideration should also be given to whether the case records that are retained are complete and accessible.

- Case information can be posted accurately by a court but then can be used inaccurately by the public. A person may be denied employment even if a court correctly shows a charge as dismissed.
- Many non-criminal cases (such as traffic offenses) show up on background reports as criminal in nature.
- Once information is published online, the information can be copied and posted anywhere or saved in any database.
- Can search warrants be deleted from online access and in the AJACS system after the one year retention period for these warrants has been met?
- When a juvenile paper case file is destroyed pursuant to court order, should the information about the case also be deleted from the case management system?
- Currently, electronic case records may remain online after MVD has destroyed its electronic record of the case and the court has destroyed its paper record of the case. The court's online record may be incomplete or contain errors but there is no way to resolve the discrepancy.
- Local charges generally only appear on the supreme court's public access website as a "local charge." A local charge can include anything from a barking dog to indecent exposure. Background check companies often read into this lack of detail and report to potential employers that the local charge could be a sex crime. This situation prevents people from being hired.
- What should be done with a record in the system under a person's name who is the victim of identity theft? Even when the charge is dismissed, the case still appears online under the name of the person who has been the victim of identity theft.
- A civil traffic charge may appear online as a criminal charge because the defendant plead "guilty" to the charge instead of "not responsible."

#### Future Meeting Dates

Members were given a list of potential future meeting dates and were asked to forward their availability to Kym Lopez.

Mr. Reinkensmeyer noted that the committee's authorizing administrative order directs the committee to deliver its report to the Arizona Judicial Council (AJC) at the Council's December meeting. Since Dr. Mangold is a member of the AJC, he will be able to help explain the committee's work. The administrative order also directs the committee to elicit extensive stakeholder comments. Some of this input can be obtained through the AOC's Website; however, we hope to also take the recommendations through the AOC's regular committee structure. Therefore, the committee should probably complete its work product by early fall.

#### Next Meeting Date

June 14, 2013; 10:00 a.m. – 3:00 p.m.

Arizona State Courts Building, Conference Room 119 A/B

#### Good of the Order/Call to the Public

No comments.

Adjourned at 1:40 p.m.